

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

OCT 27 2010

Federal Communications Commission
Office of the Secretary

In the Matter of)	EB Docket No. 07-147
)	
PENDLETON C. WAUGH, CHARLES M.)	File No. EB-06-IH-2112
AUSTIN, and JAY R. BISHOP)	NAL/Acct. No. 200732080025
)	
PREFERRED COMMUNICATION)	FRN No. 0003769049
SYSTEMS, INC.)	
)	
Licensee of Various Site-by-Site Licenses in)	
the Specialized Mobile Radio Service.)	
)	
PREFERRED ACQUISITIONS, INC.)	FRN No. 0003786183
)	
Licensee of Various Economic Area Licenses)	
in the 800 MHz Specialized Mobile Radio)	
Service)	

To: The Commission

ENFORCEMENT BUREAU'S STATEMENT OF CLARIFICATION

1. On October 26, 2010, Mr. Toshiaki Saito filed a Memorandum in Opposition to Motion to Strike in this proceeding. The Enforcement Bureau hereby files the following statement of clarification to the record.

2. Mr. Saito filed his pleading in response to a Motion to Strike filed by Mr. Pendleton C. Waugh on August 19, 2010, in reference to an earlier *ex parte* presentation made by Mr. Saito. In his instant pleading, Mr. Saito asserts, among other things, that his "*ex parte* presentation is exempt from prohibitions in restricted proceedings . . . because it was 'made with the advance approval of the Commission or staff for the clarification or adduction of evidence, or for the resolution of issues, including possible settlement.'"¹ In

¹ Memorandum in Opposition to Motion to Strike, at 2-3.

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support of his proposition, Mr. Saito cites Section 1.1204(a) of the Commission's rules as well as a July 21, 2010 letter from Bureau counsel to Mr. Saito, which he has omitted from the record. He suggests that the Bureau solicited his communications.

3. The Bureau wishes to inform the Commission that it in no way solicited Mr. Saito's communications. Mr. Saito's assertions mischaracterize and distort the Bureau's communication, and accordingly, the Bureau is compelled to clarify the record and provide a copy of the letter.² The Bureau's letter was simply a courtesy notice to Mr. Saito's counsel regarding proper service of information on the parties to the proceeding, not a solicitation of any material from him.

4. On July 6, 2010, Bureau counsel became aware that an apparently confidential letter to the Chairman was noted as received in the Electronic Comment Filing System records for this proceeding. Bureau counsel had not received a copy of this filing from Mr. Saito, and informal telephonic communications with other parties in the proceeding confirmed that the filing had not been properly served on others.

5. On July 21, 2010, due to the *ex parte* nature of this proceeding, Bureau counsel sent Mr. Saito a letter requesting that the filing be properly served on all parties to the proceeding pursuant to Commission Rules.³ The letter contained no solicitation of any communication or information from Mr. Saito.

6. On August 24, 2010, having received no further indication that Mr. Saito had properly served his original letter on the parties to this proceeding and to satisfy the Bureau's obligations under Section 1.1212(c) of the Commission's rules, the Bureau notified the Office of General Counsel of the letter filing. Section 1.1212(c) requires

² See Letter from Anjali K. Singh, Acting Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, to Toshiaki Saito, dated July 21, 2010, Attachment A hereto.

³ *Id.*

Commission personnel who receive written *ex parte* presentation materials to forward them to the Office of General Counsel.

7. The Bureau also notes that Mr. Saito opposes the settlement reached in this proceeding.⁴ For reasons noted in the Bureau's previous filings in this proceeding, the Bureau continues to support the settlement.

Respectfully submitted,
P. Michele Ellison
Chief, Enforcement Bureau



Anjali K. Singh
Acting Assistant Chief
Investigations and Hearings Division



Gary A. Oshinsky
Attorney
Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

October 27, 2010

⁴ See Opposition, *supra* note 1, at 9-10.

ATTACHMENT A



FEDERAL COMMUNICATIONS COMMISSION
Enforcement Bureau, Investigations and Hearings Division
445 12th Street, SW, Suite 4-C330
Washington, D.C. 20554

July 21, 2010

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED
AND BY FACSIMILE (808) 839-0690

Toshiaki Saito
1300 Ala Pili Loop
Honolulu, Hawaii 96818-1635

Re: EB Docket No. 07-147

Dear Mr. Saito:

By letter dated May 12, 2010, you requested the Chairman of the Federal Communications Commission to take certain actions relating to the above-referenced docketed hearing case. Your correspondence, identified as "confidential," does not appear to have been served on any of the parties in the proceeding. The letter is reflected as having been received in the Commission's Electronic Comment Filing System ("ECFS") on June 30, 2010.

This letter is to advise you, as a courtesy, that the above-captioned docketed case is a restricted proceeding under the Commission's *ex parte* rules.¹ Accordingly, no presentation may be made to decision-making personnel which, if written, is not served on the parties to the proceeding.

Your correspondence to the Chairman appears to constitute a "presentation" under the Commission's *ex parte* rules requiring that it be served on all parties to the referenced proceeding. Please serve a copy of your correspondence on all parties to the referenced proceeding, including the Chief, Enforcement Bureau, within 10 business days of the date of this letter. The names and addresses of the parties may be found by entering the appropriate docket number ("07-147") in ECFS.²

Sincerely,

Asingh

Anjali K. Singh
Acting Assistant Chief
Investigations and Hearings Division

¹ See 47 C.F.R. §§1.1200 - 1216.

² You may access ECFS at the Commission's website at
http://fjallfoss.fcc.gov/ecfs/comment_search/input?z=z903t.

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 27th day of October 2010, sent by first class United States mail or electronic mail, as noted, copies of the foregoing

"Enforcement Bureau's Statement of Clarification," to:

Charles M. Austin
Preferred Acquisitions, Inc.
Preferred Communication Systems, Inc.
400 East Royal Lane, 9 Suite N-24
Irving, TX 75039
precomsys@aol.com

Jay R. Bishop
P.O. Box 5598
Palm Springs, CA 92262
jaybishopps@aol.com
michellebishopps@aol.com

Joel Kaufman*
Associate General Counsel
Federal Communications Commission
445 12th Street, S.W., Room 8-A666
Washington, D.C. 20054


Michael D. Judy
5874 East Nees
Clovis, California 93611

Chief Administrative Law Judge Richard L. Sippel*
Federal Communications Commission
445 12th Street, S.W., Room 1-C768
Washington, D.C. 20054

William D. Silva**
Law Offices of William D. Silva
P.O. Box 1121
Stevensville, MD 21666
bill@luselaw.com
Attorney for Pendleton C. Waugh

James McWhinnie
Damon Key Leong Kupchak Hastert
1003 Bishop Street, Suite 1600
Honolulu, Hawaii 96813

David L. Hill
Hall Estill, Hardwick, Gable,
Golden, & Nelson, P.C.
1120 20th Street
Suite 700, North Building
Washington, DC 20036


Makia Day

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